

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BETH MAXWELL STRATTON, CHAPTER  
7 BANKRUPTCY TRUSTEE FOR THE  
SGP BENEFIT PLAN, INC.,

Plaintiff,

v.

GLACIER INSURANCE  
ADMINISTRATORS, INC.; GLACIER  
INSURANCE ENTERPRISE, INC.;  
FRESNO AGENT SERVICE TEAM, INC  
DOING BUSINESS AS BEN MAR  
SERVICES; LAWRENCE THOMPSON;  
BRAD STARK; PIERRE TADA; NORMA  
SPALDING; DICK NEECE, SR;  
WILLIAM WOLHAUPTER; AND DOES 1  
THROUGH 250, INCLUSIVE,

Defendants.

1:02-CV-06213 OWW DLB

MEMORANDUM DECISION AND ORDER  
GRANTING SECOND APPLICATION  
FOR APPROVAL OF PROFESSIONAL  
FEES OF CHAPTER 7  
TRUSTEE/INDEPENDENT FIDUCIARY

**1. INTRODUCTION**

Stratton brings this motion as a Chapter 7 Bankruptcy Trustee of the SGP Benefit Plan, Inc., and as the court-appointed independent fiduciary for the SGP Benefit Plan ("The Plan"), and the SGP Benefit Trust ("The Trust" or, collectively, "SGP/P/T".) The Findings of Fact and Conclusions of Law entered in this case on November 11, 2006 and the Judgement entered on November 27,

1 2006 were entered subject to Stratton's further fee applications  
2 for services rendered after April 19, 2006. This is Stratton's  
3 second motion for approval of professional fees. This motion is  
4 unopposed.

## 5 **2. BACKGROUND**

6 The lengthy history of this litigation is set forth in great  
7 detail in numerous memoranda decisions issued by the district  
8 court, including a prior decision on the Findings of Fact and  
9 Conclusions of Law (Doc. 175, Filed November 22, 2006), and an  
10 order approving Stratton's first application for attorneys' fees  
11 (Doc. 185, Order Re: Class Settlement, Permanent Injunction, and  
12 attorneys fees, Filed January 29, 2007.) For the purposes of  
13 this motion, a brief background summary is sufficient.

14 SGP was created in August 1990 as a California non-profit  
15 mutual benefit corporation for the purpose of administering a  
16 voluntary employees benefit association. The Plan, also referred  
17 to at time as the Trust, is an employee welfare benefit plan  
18 under ERISA § 1002(1)(A). It was designed to be a multiple  
19 employer welfare arrangement in accordance with ERISA for the  
20 purpose of providing medical, surgical, and/or hospital care  
21 benefits to members and affiliates of Sunkist Growers, Inc.  
22 ("Sunkist"). SGP was the designated plan sponsor.

23 Glacier Insurance Enterprises, Inc. ("Glacier") and its  
24 president and chief executive officer, Larry Thompson, acted as  
25 administrators and consultants of the Plan throughout its  
26 existence. Glacier was responsible for reporting to the officers  
27 of SGP/P/T.

28 Sunkist was an original promoter of the Plan and is alleged

1 to have been a fiduciary and party in interest with respect to  
2 the Plan within the meaning of ERISA. 29 U.S.C. §1002(21); 29  
3 U.S.C. §1002(14). Sunkist members and officers including some of  
4 the former Trustee Defendants and Ted Jones, were also officers  
5 of SGP and/or trustees of the Plan and Trust. Sunkist endorsed  
6 and actively participated in promotion of the Plan and provided  
7 certain assurances regarding Plan financing.

8 The Plan did well and operated without a loss throughout its  
9 first years of existence. However, the Plan began to show  
10 significant losses by 1999. For its fiscal year ending on  
11 September 30, 1999, it had a \$240,000 loss after accounting for  
12 funds in reserve. By fiscal year end on September 30, 2000, the  
13 annual losses had increased to \$3.5 million.

14 The California Department of Insurance investigated the Plan  
15 and directed that it stop accepting new insureds in July 2001.  
16 The Plan ceased operation in October of 2001. The United States  
17 Department of Labor ("DOL") conducted an exhaustive investigation  
18 into the history and demise of SGP/P/T and determined that there  
19 was possibly as much as \$10 million in medical claims against the  
20 Plan outstanding and unpaid as of the end of 2001. No claims  
21 have been paid since the Plan ceased operation in October 2001.  
22 The plan is without assets and there are no funds to pay claims  
23 except as may be produced through this litigation. Medical  
24 providers began to seek payment of their claims directly from  
25 their patients and/or their employers.

26 On February 25, 2002, SGP, Inc. filed for protection under  
27 Chapter 7 of the United States Bankruptcy Code. Stratton became  
28 the duly qualified, appointed and acting Chapter 7 Bankruptcy

1 Trustee of SGP. The bankruptcy case was removed to the district  
2 court. On May 28, 2003 the court appointed Stratton as an  
3 independent fiduciary of the Plan and Trust in place of Former  
4 Trustee Defendants.

5 On October 1, 2002 Stratton initiated litigation to recover  
6 SGP/P/T's losses from Sunkist, Glacier, and the Former Trustee  
7 Defendants alleging each of the defendants had breached fiduciary  
8 duties owed to SGP/P/T. Stratton alleged causes of action for  
9 breach of fiduciary duties imposed by ERISA, misrepresentation,  
10 breach of contract, negligence, and engaging in prohibited  
11 transactions.

12 All parties eventually reached a settlement agreement that  
13 was approved by the district court on January 29, 2007. (Doc.  
14 185, Order Re: Class Settlement Agreement, Granting Permanent  
15 Injunction against future claims, Attorneys Fees.) The  
16 Settlement Agreement resolves a dispute between the Plaintiff and  
17 Defendants Glacier Insurance Administrators, Inc. ("Glacier"),  
18 Former Officers and Trustees of SGP/P/T ("Former Trustee  
19 Defendants.") The court also ordered the release of settlement  
20 funds from the court registry. (Doc. 184, Order Releasing  
21 Settlement Funds from Court Registry, Filed January 19, 2007.)

22 In this motion, Stratton reports to the court that after the  
23 appeal period for the findings of fact expired, the first  
24 disbursement of funds to claimants were made. (Doc. 189, Second  
25 Application for Approval of Professional Fees, ¶ 11, Filed May  
26 30, 2007.) Stratton states that approximately 630 checks were  
27 issued and several were returned for bad addresses. (*Id.*) New  
28 addresses for most such claimants have since been found and the

1 checks re-mailed. (*Id.*) However there are still several  
2 outstanding checks. (*Id.*) Stratton does not know whether said  
3 checks are lost or simply have not yet been cashed. (*Id.*)  
4 Stratton claims that in her experience, claimants often hold onto  
5 checks for several months before depositing them. (*Id.*) In the  
6 next month, Stratton will be researching the outstanding checks  
7 to see whether a stop payment and reissue is appropriate. (*Id.*)  
8 She will not determine for another several months whether or not  
9 there will be sufficient excess funds for a second distribution  
10 to claimants. (*Id.*)

### 11 **3. STANDARD OF REVIEW**

12 Attorneys' fees provisions included in proposed class action  
13 settlement agreements are, like every other aspect of such  
14 agreements, subject to the court's scrutiny for fairness,  
15 reasonableness, and adequacy. *Staton v. Boeing Co.*, 327 F.3d  
16 938, 963 (9th Cir. 2003). "Thus, to avoid abdicating its  
17 responsibility to review the agreement for the protection of the  
18 class, a district court must carefully assess the reasonableness  
19 of a fee amount spelled out in a class action settlement  
20 agreement." *Id.* If fees are unreasonably high, there is a  
21 "likelihood [] that the defendant obtained an economically  
22 beneficial concession with regard to the merits provisions, in  
23 the form of lower monetary payments to class members or less  
24 injunctive relief for the class than could otherwise have [been]  
25 obtained." *Id.* at 964. However, the court's task in reviewing  
26 negotiated fees is different from the court's task in fashioning  
27 fee awards from scratch. *Robbins*, 127 Cal. App. 4th at 444. The  
28 court is simply to determine whether the negotiated fee is

1 facially fair and reasonable. *Id.* This task requires the court  
2 to review the settlement agreement as a whole, including the fee  
3 award, to ensure that it was fairly and honestly negotiated, is  
4 not collusive, and adequately protects the interests of the  
5 parties. *Id.* Plaintiffs' attorneys have a duty to limit fees to  
6 an amount that represents the value of the work done. *Id.*  
7 Therefore, although a negotiated fee may represent a reasoned  
8 business decision to settle, a negotiated fee that exceeds a  
9 reasonable fee for the attorneys' contribution may not be  
10 approved. *Id.*

11 In calculating attorneys' fees in civil class action suits,  
12 the district court has discretion to use either the percentage  
13 method or the lodestar/multiplier method. *Hanlon v. Chrysler*  
14 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).<sup>1</sup> In determining  
15 Attorneys' Fees, counsel has used the lodestar method in this  
16 case. "In determining what a reasonable attorney's fee entails,  
17 the district court must apply the hybrid approach adopted in  
18 *Hensley v. Eckerhart*, 461 U.S. 424, 433 [] (1983)." *United*  
19 *States v. \$12,248 U.S. Currency*, 957 F.2d 1513, 1520 (9th Cir.  
20 1992). "The most useful starting point for determining the  
21 amount of a reasonable fee is [1] the number of hours reasonably  
22 expended on the litigation [2] multiplied by a reasonable hourly  
23 rate." *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir.  
24 2001) (relying upon *Hensley*, 461 U.S. at 433). The resulting

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26 <sup>1</sup> When a settlement agreement creates a large fund for  
27 distribution to a class, as is the case here, courts may use  
28 either of these two options in determining what is fair and  
reasonable.

figure is known as the "Lodestar."

To determine what qualifies as reasonable attorney's fees, the Ninth Circuit has adopted the twelve Lodestar Factors as "guidelines [and] as appropriate factors to be considered in the balancing process required in a determination of reasonable attorney's fees:"

- (1) the time and labor required,
- (2) the novelty and difficulty of the questions involved,
- (3) the skill requisite to perform the legal service properly,
- (4) the preclusion of other employment by the attorney due to acceptance of the case,
- (5) the customary fee,
- (6) whether the fee is fixed or contingent,
- (7) time limitations imposed by the client or the circumstances,
- (8) the amount involved and the results obtained,
- (9) the experience, reputation, and ability of the attorneys,
- (10) the "undesirability" of the case,
- (11) the nature and length of the professional relationship with the client, and
- (12) awards in similar cases.

*Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 71 (9th Cir. 1975) (suits brought pursuant to 29 U.S.C. §§ 412 and 529) (citing *Johnson*, 488 F.2d 714); see also \$12,248 U.S. Currency, 957 F.2d at 1520 (applying the twelve factors outlined in *Kerr* to the EAJA). "[Although] the lodestar determination has emerged as

the predominate element of the analysis....the court [can still] make adjustments to the lodestar figure based on the 'riskiness' of the lawsuit and the quality of the attorney's work." *Jordan v. Multnomah Co.*, 815 F.2d 1258, 1262 n.5 (9th Cir. 1986). In addition, the court may reduce the fee award "if the relief, however significant, is limited in comparison to the scope of the litigation as a whole." *Hensley*, 461 U.S. at 440.

#### 4. DISCUSSION

In her request for approval of settlement and fees, Stratton was authorized to submit further fee applications for services rendered after April 19, 2006. She first estimated that future fees for services (post April 19, 2006) would approximate \$26,250.00. In this application she is requesting \$21,701.25, an amount less than the estimated amount. (Doc. 189, Second Application for Approval of Professional Fees, ¶ 11, Filed May 30, 2007.) Stratton claims that she has utilized staff from her office to perform necessary services, where that staff member could perform the task at a lesser hourly rate than that of Stratton. (*Id.*) Stratton claims that most time spent by staff was spent locating new addresses for returned mail. (*Id.*) This task was required to be done in a very short period of time and it was necessary to utilize the entire staff (including Mr. Seng) in order to timely accomplish the task.

Stratton requests the following additional fees:

Person's Name	Hourly Rate x Total Hours = Total Fees
Beth Maxwell Stratton, Chapter 7 Trustee	\$175.00 x. 95.10 hours = \$16,642.50



Michael J. Seng, Attorney (at law clerk rate)	\$100.00 x 4.8 hours = \$480.00
Desiree Torrenz, law clerk	\$100.00 x 14.00 hours = 1,400.00
Kerry Cubberly, paralegal	\$75.00 x 6.8 hours = \$510.00
Nithi Jhaveri, legal assistant	\$75.00 x. 17.25 hours = \$1,293.75
Joy Kirk, legal assistant	\$50.00 x 17.00 hours = \$850.00
Angela Guthrey, legal assistant	\$50.00 x 10.5 hours = \$525.00
<b>TOTAL</b>	<b>\$21,701.25</b>

Stratton also requests the following fees for the Law Offices of Seng and Stratton:

Person's Name	Hourly Rate x Total Hours = Total Fees
Michael J. Seng, Partner	\$75.00 x. 115.40 hours = \$8,655.00
Beth Maxwell Stratton, Partner	\$75.00 x \$112.70 hours = \$8,452.50
Legal Assistant/ Paralegal	\$25.00 x. 6.20 hours = \$155.00
<b>TOTAL</b>	<b>\$17,262.50</b>

All hours calculated are reasonable. Class counsel has submitted evidence of invoices dating back to April 3, 2006. The invoices detail services rendered in this case after April 19, 2006. The hourly rates used to calculate the lodestar are also reasonable. There were no objections to the approval of

1 additional fees by any party.

2 **5. CONCLUSION**

3 The second request for Attorneys Fees is **GRANTED.**

4 IT IS SO ORDERED.

5 **Dated: July 3, 2007**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**